

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7).

We will assume that record check information encompasses the claim file information made confidential under section 402.084. Cf. Attorney General Opinion DM-181 (1992) (construing predecessor provision and concluding statute's requirement of release of record check requires Commission to release only information in or derived from claim file). United Pacific asserts that it is entitled to access to the claim information at issued here pursuant to subsection (b)(7). United Pacific also asserts that it is entitled to access to the claim information because it is subrogated to the rights of the parties listed in subsections (b)(3), (b)(4) and (b)(5).

United Pacific has not established that it is entitled to claim file information pursuant to subsection (b)(7). By bringing the section 407.066 proceeding before the Director,² we do not believe United Pacific is "a third party litigant in a lawsuit in which the cause of action arises from the incident that gave rise to the injury."³

Furthermore, we do not believe the equitable doctrine of subrogation applies in the context of a statutory right of access to information. Subrogation is the substitution of one party in the place of another, so that the party who is substituted succeeds to the right of the other in relation to the debt or claim. *See generally* 68 Tex. Jur. 3d *Subrogation* § 1 (1989). Neither courts nor this office has permitted a requestor to obtain information based on the equitable doctrine of subrogation. Cf. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 674-675 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (court may not use its inherent equitable powers to determine availability of information sought under Open Records Act). We have no authority to allow us to conclude that a subrogee's rights under this doctrine include statutory access to information. We note that the Texas Supreme Court has recognized that, in many cases, disclosure of information about a particular injury could constitute an invasion of privacy. *See id.* We also note that the motives of a requestor in seeking information are not be considered in determining whether information must be disclosed. *See id.*

²Section 407.066 requires the Director to resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees that arise among (1) a surety; (2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities; (3) an issuer of a letter of credit; (4) a custodian of the security deposit; (5) a certified self-insurer; or (6) the Association. Labor Code § 407.066(a).

³In contrast, we note that section 407.130 of the Labor Code expressly deems the Association to be a party in interest in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the Association. *See* Labor Code § 407.130 (a).

Moreover, the legislature's intent in regard to subrogees of the listed recipients is manifest in the provision. By specifying particular entities and individuals that may have access to the information, the provision excludes all other individuals and entities that are not included in the specification. *But see* Labor Code § 407.129 (permitting release of claim information to Association if it has assumed impaired employer's obligations). We cannot, based on subrogation principles, engraft a subrogee onto the list in section 402.084, for to do so is inconsistent with the legislative intent that only the individuals and entities enumerated therein have access to the information. *See, e.g.*, Attorney General Opinion JM-590 (1986). The express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others. *State v. Mauritz Wells Co.*, 175 S.W.2d 238 (Tex. 1943); *Federal Crude Oil Co. V. Young-Lee Oil Co.*, 52 S.W. 2d 56 (Tex. 1932); *see* Attorney General Opinion JM-590 (1986). Thus, where a statute enumerates entities and individuals to whom confidential information may be disclosed, an entity not enumerated, albeit the subrogee of an enumerated entity, is not thereby entitled to the information.

Nor do we believe that, as United Pacific argues, the terms of the bond whereby the surety is liable for the principal's obligations and entitled to repayment of any remaining funds implies a right of access to information about those obligations and costs charged against the bond. Therefore, even though United Pacific is the surety on the bond, and assuming United Pacific is a subrogee of one of the parties listed in section 402.084, the statute does not grant United Pacific access to the information.

Thus, section 402.084 does not entitle United Pacific to any information. Consequently, the Commission must not release the information that explicitly or implicitly discloses the claimants' identities to United Pacific. ⁴ Labor Code § 402.083; Gov't Code § 552.101.

Finally, we consider whether the ADA protects the medical information. The ADA prohibits discrimination against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment. 42 U.S.A. § 12112(a). Information an employer collects under the ADA from an applicant for employment or an employee concerning that individual's medical condition and medical history is confidential under the ADA. 42 U.S.C. § 12112(d); 20 C.F.R. § 1630.14; *see* Open Records Decision No. 641 (1996). We do not

⁴Examples of information that explicitly discloses a claimant's identity include the claimant's name, spouse's name, social security number, home telephone number and home address. *See* Open Records Letter No. 93-549 (1993). Examples of information that implicitly discloses a claimant's identity include a claimant's birth date and insurance identification number. *See* Open Records Letter No. 94-068 (1994). This office has determined that a claimant's sex, race, ethnicity, job supervisor and location of where the injury occurred do not implicitly disclose a claimant's identity. *See id.*

believe that in this instance the medical information the Commission collected under workers' compensation law is subject to the ADA.⁵ Further, as section 402.083 prohibits the public release of the information that implicitly or explicitly identifies a claimant, we do not believe the release of the information can be used to discriminate against an individual in employment. *But see* Attorney General Opinion DM-124 (1992) (Commission lawfully may not release information about applicants' prior injuries to covered employers at the pre-offer stage). Thus, the ADA does not prohibit the Commission from releasing the medical information in the files at issue.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Enclosures: Submitted documents

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⁵ The ADA does not prohibit employers from collecting medical information in compliance with state workers compensation laws or from submitting medical information to state workers' compensation officers in accordance with state workers' compensation laws, provided those laws do not conflict with the ADA. 29 C.F.R. pt.1630.14(b)